IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5341 OF 2005

Ravindar Gangaram Challa ...Applicant
vs.
State of Maharashtra ...Respondent

CRIMINAL APPLICATION NO.5342 OF 2005

Smt.Sujata Rakesh Kale ...Applicant
vs.
State of Maharashtra ...Respondent

CRIMINAL APPLICATION NO.5343 OF 2005

Rakesh Ramesh Kale ...Applicant
vs.
State of Maharashtra ...Respondent

CRIMINAL APPLICATION NO.5518 OF 2005

Smt.Sujatha Gangaram Challa ...Applicant
vs.
State of Maharashtra ...Respondent

Mr.Abhijeet Parulekar for the Applicants
Mr.K.V.Saste,A.P.P. for State
Mr.Bhise for original complainant in Cri.Appln.Nos.5342 & 5343/2005.

CORAM: A.S.OKA,J.
DATE : AUGUST 29,2005

P.C.:

1. Heard Advocate appearing for the Applicants in these Applications. I have also heard learned A.P.P. for the State in all the four applications. I have heard Shri Bhise for the original complainant in Criminal Application Nos.5342 and 5343 of 2005.

2. The learned Advocate for the Applicants has invited my attention to the Judgment and Order dated 3rd August 2005 passed by the learned Sessions Judge in the application for anticipatory bail filed by the Applicants in Criminal Application no.5341 of 2005. There is no dispute between the parties that identical orders have been passed by the learned Sessions Judge in case of the Applicants in other three applications.

3. The learned Advocate for the Applicants submitted that the learned Sessions Judge has not recorded any finding whether the Applicant is entitled to anticipatory bail or not. He pointed out that if the Applicant had made out a case for grant of anticipatory bail, the learned Sessions Judge ought to have granted anticipatory bail which could have enured to the benefit of the Applicant for a reasonable period so as to avoid undue harassment due to pre-trial arrest.

4. The learned A.P.P. submitted that the Applicants in these Applications had no case on merits. The learned A.P.P. submitted that with respect to the learned Sessions Judge, Clause Nos.1 and 2 of the operative part of the order passed by him are confusing. The learned A.P.P., therefore, submitted that though the Applicants in these Applicants

reported to the Investigating Officer on 18th August 2005, the Investigating Officer did not arrest the Applicants on that day as there was some confusion in the mind of the Investigating Officer regarding interpretation of the order. The learned A.P.P., therefore, submitted that though the Applicants may not have any case on merits, it is desirable that the application for anticipatory bail should be heard afresh by the learned Sessions Judge so that the relevant material placed on record by the Investigating Officer can be considered by the Sessions Court. The learned Advocate for the original complainant appeared in Criminal Application No.5342 and 5343 of 2005 has supported the case of the Applicant in the said Applications.

5. In my view, there is some substance in the submissions made by the learned A.P.P. appearing for the State that there is some inconsistency in the Clause Nos.1 and 2 of the operative part of the order dated 3rd August 2005 passed by the Sessions Judge.

6. The object of Section 438 of the Code of Criminal Procedure, 1973 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The Apex Court in a recent Judgment reported in (2003) 8 S.C.C. page no.77 (Bharat Chaudhary & another vs. State of Bihar and another)

held that the gravity of offence and the need for custodial interrogation are the only factors which are required to be considered while deciding an application under Section 438 of the Code of Criminal Procedure, 1973. In another decision reported in (1997) 7 S.C.C. page 187, the principles governing grant of pre-arrest bail have been highlighted. In the said decision, the Apex Court held that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is armed with an order under Section 438 of the Code.

A reference will have to be made to the decision of the Apex Court reported in (1980) 2 S.C.C. page No.565 (Gurbaksh Singh Sibbia Vs. State of Punjab). In the said decision the Apex Court has dealt with the powers of the Sessions Court and this Court under Section 438 of the said Code. The Apex court held that in a given case, if there are reasons for doing so, the Court can limit operation of an order under Section 438 for a short period until governed by the Section 437 of the said Code. However, the Apex Court held that this need not be followed as invariable rule. In a later decision reported in A.I.R. 1996 S.C. page No.1042 (Salauddin Abdulsamad Shaikh Vs. State of Maharashtra), the Apex Court held that the anticipatory bail order should be for only a limited duration and ordinarily, on expiry of that duration or extended

duration, the Court granting anticipatory bail should leave it to the regular Court to deal with the matter.

7. In the present case, Clause No.1 of the operative part of the order passed by the Sessions Judge directs that in the event of arrest of the Applicant by the Investigating Officer before 16th August 2005, he shall be released on temporary bail. Clause No.2 states that before expiry of the said period, the Applicant will be at liberty to appear before the Investigating Agency whereupon he can be produced before the regular Court. Clause No.1 does not specify as to what will be duration of temporary bail if the applicant is arrested before 16th August 2005 and is enlarged on temporary bail.

8. As indicated earlier, the Sessions Court has not considered the only two relevant factors viz. gravity of allegations and need for custodial interrogation before deciding the Applications. If the said factors exist in a case, anticipatory bail cannot be granted and application is required to be rejected. If the Court is satisfied after considering material produced before it that custodial interrogation is required, protection cannot be granted against arrest even for a limited period. Without considering these aspects the learned Judge has observed thus,

. "A detailed probe is required into rival contentions. However, the scope and ambit of the application u/s.438 Cr.P.C. is extremely limited. This is a preliminary stage of investigation. It is the regular Court which needs to consider the material collected by the police as well as the contentions raised by the applicant."

It is well settled that considerations for grant of pre-arrest bail are different from the consideration for grant of regular bail. The learned Sessions Judge has not considered whether the Applicants in these Applications are entitled to pre-arrest bail on merits of the case. The learned Judge has purported to grant protection for a limited duration without recording any finding on merits of the case made out for grant of anticipatory bail. Hence, in my view, the applications made by the Applicants deserve to be reconsidered by the Sessions Court in the light of principles laid down by the Apex Court.

9. At this stage, the learned A.P.P. pointed out that considering the place at which the offence has been registered, the learned Sessions Judge, Thane will not have jurisdiction to entertain the applications made by the Applicants. If that is so, the State is free to raise that contention when the learned Sessions Judge hears the

Applications.

10. Hence I pass the following order :

i) Orders dated 3rd August 2005 passed in Criminal Application Nos.870, 871, 872 and 892 of 2005 are quashed and set aside.

ii) The learned Sessions Judge, Thane will hear and decide the Applications on merits afresh in the light of law laid down by the Apex Court. The objection raised by the learned A.P.P. as regards jurisdiction of the learned Sessions Judge, Thane to hear the Applications will be naturally considered by the learned Sessions Judge, Thane.

iii) The Applications shall be decided afresh by the learned Sessions Judge within a period of two weeks the date of receipt of writ of this order. Till the decision of the Applications, the Applicants shall not be arrested in connection with C.R.No.I-153 of 2005 registered with Economic Offences Wing, Thane subject to condition of complying with the conditions incorporated in clause (i) to (iii) of Sub Section 2 of Section 438 of the Code of Criminal Procedure, 1973.

iv) All questions on merit are kept open.

v) Writ of this order to be sent forthwith.

vi) Parties to act upon an authenticated copy of this order.

JUDGE